IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R.No. 4003 of 2005
Date of decision : 11.12.2006.

Rajnish Sehgal

.....Petitioner.

Versus

Suresh Pal & Ors.

.....Respondents.

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr. S.K. Garg Narwana,Advocate
for the petitioner.

Mr. K.K. Gupta, Advocate
for respondent No.3.

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VINOD K. SHARMA,J.(ORAL)

The present revision petition has been filed against the orders passed by the learned Courts below whereby the application under Order 39 Rules 1 & 2 C.P.C. filed by the plaintiff-petitioner has been dismissed.

The plaintiff petitioner filed a suit for declaration claiming himself to be the partner in firm known as M/s Subhash and Company, Kurukshetra. As per the partnership deed dated 19.12.2003 it was claimed by the plaintiff that the firm was allotted the work of handing and transporting of Food Grains of FCI from Taraori to Delhi in the year 2004. The security was also deposited by the firm. It was claimed that the firm had done the work worth Rs. 29,00,000/- and a final bill for payment was sent to the office of FCI. It was further claimed that a sum of Rs. 4,00,000/- had been withdrawn by defendants No. 1 & 2 and the same has been deposited

in a new account in ICICI bank. It was claimed that a bogus partnership deed was furnished by defendants No. 1 & 2 in which the name of the plaintiff has been deleted therefrom on the ground that he had left the firm. It was claimed that the original partnership has not come to an end and accordingly a suit for declaration was filed in which an application was filed seeking temporary injunction against the FCI from releasing payment to defendants No. 1 & 2.

The defendants No. 1 & 2 in the joint written statement claimed that the plaintiff has no locus standi to file the suit as new partnership deed had been executed on 10.5.2004 between defendants No. 1 & 2 and the earlier partnership deed stood cancelled. It was also claimed that plaintiff had given a writing with an intention to withdraw from the firm M/s Subhash and Company, Kurukshetra in the form of affidavit duly attested by a Notary Public. Thus, it was claimed that the plaintiff has no interest in the firm. It was further claimed that after the plaintiff petitioner left the firm the work was undertaken by defendants No. 1 & 2 of transporting the food grains of FCI from Taraori to Delhi. It was further claimed that the security was deposited by defendant No.2 and not by the plaintiff. The defendant No.3, FCI filed written statement by taking a preliminary objection that the plaintiff had no cause of action to file and maintain the suit against defendant FCI. It was also claimed that defendant No.3 ha d no concern with the alleged dispute between the plaintiff and defendants No. 1 & 2. The FCI further claimed that the tender for appointment of handling and transporting of goods from Taraori to Delhi was given as per the partnership deed dated 10.3.2004 in which the plaintiff petitioner was not partner. Similar stand was taken by the Branch Manager of ICICI defendant No.4.

The learned Courts below came to the conclusion that there was no privity of contract between the plaintiff petitioner and the Bank qua the transportation of goods of FCI from Taraori to Delhi. It was also held that the contract of transporting of goods was independent of the contract of handling and transporting the goods of HAFED department and District Food and Supplies Controller from Taraori Mandi to its godown. Thus, the learned courts below came to the conclusion that the petitioner had no prima facie case. The learned Courts below also came to the conclusion that mere correspondence at the address known M/s Bharat Rice Mills owned by the plaintiff did not prove any contract between the plaintiff and the FCI. The learned Court further came to the conclusion that even if the dispute raised by the plaintiff petitioner was genuine then the plaintiff had a right to seek a remedy by filing a suit for rendition of accounts against defendant No.1 and he has no right to claim relief against the remaining defendants. It was also claimed that the plaintiff would suffer no loss or injury if the injunction would not be granted to him as remedy of rendition of accounts was always available to him. In support of this finding the reliance was placed on the judgment of the Hon'ble Supreme Court in the case of ***Hazrat Surat Shah Urdu Education Society versus Aboul Saheb 1988(5) SLR(SC) 768*** .

Mr. S.K. Garg Narwana, Advocate for the petitioner challenged the orders passed by the learned Courts below primarily on the ground that the affidavit dated 9.3.2004 on the basis of which petitioner is alleged retired from the firm was not signed by him nor the same was signed by the petitioner and certificate in this regard was issued by Dena Nath, Advocate Notary Public. The contention of the learned counsel for the petitioner was

that a fraud has been played with him and, therefore, he has a prima facie case in his favour and balance of convenience shall also in his favour.

The learned counsel for the petitioner further contended that the learned Courts below could not have rejected the application for temporary injunction on the ground that the petitioner could file a suit for rendition of accounts. The Courts were bound to decide on the basis of pleadings of parties.

Mr. K.K. Gupta, Advocate appearing on behalf of respondent No.3 contended that FCI was bound by the privity of contract and once the contract was given to the firm as per the partnership deed placed with the tender it was bound to make the payment to the said firm and was not bound by the inter se dispute between plaintiff and the defendants.

I have considered the arguments raised by the parties and find no force in the contention raised by the learned counsel for the petitioner. The FCI was bound by the contract, it entered with the firm and, therefore, no injunction could be issued restraining it from making payment to a party with which it had entered into a contract. Even otherwise, learned Courts below were right in coming to the conclusion that if the partnership deed is still in existence, it is always open to the petitioner to file a suit for rendition of accounts and take appropriate proceedings in accordance with law.

Thus, there is no error or illegality in the order passed by the learned Courts below which may call for interference by this Court in exercise of revisional jurisdiction.

Dismissed.

11.12.2006 **(VINOD K. SHARMA)**
'sp' **JUDGE**